

NON - DISCLOSURE AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definition of Confidential Information. "**Confidential Information**" shall mean any information related to Discloser's business, prospects, technologies, current products, future products and proposed products and services, whether written, oral or visual, disclosed or provided by the Discloser to Recipient, including without limitation patent, copyright, trade secret and other proprietary information, research, development, scientific or financial data, compilations, formulae, models, design details, patent disclosures, procedures, processes, projections, protocols, results of experimentation and testing, specifications, strategies and techniques, customer lists and information, business forecasts, sales information, manufacturing information and assets. Without limiting the foregoing, "Confidential Information" includes without limitation, any information that may be made known to Recipient and which Discloser has received from others that Discloser is obligated to treat as confidential or proprietary, whether or not marked as confidential.
2. Nondisclosure and Nonuse Obligations. Recipient shall not use, disseminate, or in any way disclose the Confidential Information of the Discloser at any time except for internal evaluation(s) thereof in furtherance of the Purpose. Recipient shall treat all Confidential Information with the same degree of care as Recipient accords to Recipient's own confidential information, but not less than reasonable care. Recipient shall maintain the Confidential Information of the Discloser in confidence, and shall not disclose the Confidential Information of the Discloser to any third party. Recipient shall assist Discloser, at Recipient's expense, in remedying any such unauthorized use or disclosure of the Confidential Information. Recipient shall be liable to Discloser for any breach of the confidentiality and/or use obligations hereunder by Recipient or any Affiliate of Recipient.
3. Exclusions from Nondisclosure and Nonuse Obligations. Recipient's obligations under Section 2 (Nondisclosure and Nonuse Obligations) shall not apply to any Confidential Information that Recipient can document: (a) was in the public domain at or subsequent to the time such Confidential Information was communicated by Discloser to Recipient through no fault of Recipient; (b) was lawfully in Recipient's possession free of any obligation of confidence at or subsequent to the time of disclosure thereof by Discloser to Recipient; (c) was developed by employees, contractors or agents of Recipient independently of and without use of or reference to any Confidential Information disclosed by Discloser to Recipient, (d) was known to Recipient at the time of disclosure, (e) was approved for release by prior written authorization of Discloser; or (f) was provided to Recipient by a third party without obligation of confidentiality. A disclosure of any Confidential Information (i) in response to a valid order by a court or other governmental body or (ii) as otherwise required by law shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however that Recipient shall provide prompt prior written notice thereof to Discloser to enable Discloser to seek a protective order or otherwise prevent such disclosure. Recipient shall have the burden of proof with respect to this Section.
4. Ownership and Return of Confidential Information. All of Disclosed Confidential Information is the property of Discloser and no license or other rights to Discloser's Confidential Information is granted or implied hereby. All materials (including, without limitation, documents, drawings, papers, diskettes, tapes, models, apparatus, sketches, designs and lists) furnished by

Discloser to Recipient (whether or not they contain or disclose Discloser's Confidential Information) are the property of Discloser. Within five (5) days after any request by Discloser, Recipient shall destroy or deliver to Discloser, at Discloser's option, (a) all such Discloser-furnished materials and (b) all materials in Recipient's possession or control (even if not Discloser-furnished) that contain or disclose any of Discloser's Confidential Information; provided, however that Recipient may retain one (1) copy for its legal archive files solely for the purpose of administering Recipient's compliance with this Agreement or for purposes of regulatory compliance. Recipient will provide Discloser a written certification of Recipient's compliance with Recipient's obligations under this Section.

5. Independent Development. Recipient may currently or in the future be developing information internally, or receiving information from other parties that may be similar to such Discloser's Confidential Information. Accordingly, nothing in this Agreement shall be construed as a representation or inference that Recipient will not develop or have developed products or services, that, without violation of this Agreement, might compete with the products or systems contemplated by such Discloser's Confidential Information.

6. Disclosure of Third-Party Information. Neither party shall communicate any information to the other in violation of the proprietary rights of any third party.

7. No Warranty. Recipient's use and evaluation of the Discloser's Confidential Information shall be at its own risk. All Confidential Information is provided by Discloser "AS IS" and without any warranty, express, implied or otherwise, regarding such Confidential Information's accuracy or performance. This Agreement does not require either party to disclose Confidential Information to the other party.

8. Term of Agreement. This Agreement shall govern all communications between the parties from the Effective Date until such date that either party receives from the other party written notice terminating the Agreement (with a copy of such notice sent to the attention of the receiving party's legal department), following which, subsequent communications shall not be governed by this Agreement. If the parties enter into one or more business relationships or transactions, the rights and obligations set forth herein with regard to Confidential Information shall remain in full force and effect but only to the extent such rights and obligations do not conflict with, and have not been superseded by terms set forth in any written agreement(s) executed by the parties subsequent to the Effective Date of this Agreement.

9. Survival. Recipient's obligations under Section 2 (Nondisclosure and Nonuse Obligations) shall continue for a period of seven (7) years from the effective date of termination of this Agreement, provided that such obligations will remain applicable to any Confidential Information that is a trade secret for so long as such information remains a trade secret.

Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when actually delivered; (b) by overnight courier, upon written verification of receipt; (c) by facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth above or to such other address as either party may provide in writing.

No Assignment. Recipient shall not assign or transfer any rights or obligations under this Agreement without the prior written consent of Discloser, which consent shall not be unreasonably withheld; provided, however, that either party may, without such consent, assign this Agreement and its rights and obligations hereunder in connection with the transfer or sale of all or substantially all of its

business, or in the event of its merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all obligations of its assignor under this Agreement.

Injunctive Relief. A breach of any of the promises or agreements contained herein may result in irreparable and continuing damage to the Discloser for which there may be no adequate remedy at law, and the Discloser may be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be legally available (including monetary damages, if appropriate).

Modification, Amendment. No change, modification, extension, amendment, or waiver of this Agreement, or any of the provisions herein contained, shall be valid unless expressly provided in a writing signed by duly authorized representatives of the parties.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Severability. If a court of law holds any provision of this Agreement to be illegal, invalid or unenforceable, (a) that provision shall be deemed amended to achieve an economic effect that is as near as possible to that provided by the original provision and (b) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected.

Entire Agreement. This Agreement represents the entire agreement between the parties regarding the subject matter hereof and shall supersede all previous communications, representations, understandings and agreements, whether oral or written, by or between the parties with respect to the subject matter hereof; provided however that if, prior to the Effective Date, the parties have previously executed any agreement(s) governing Confidential Information, such prior agreement(s) shall continue to exclusively govern any Confidential Information disclosed thereunder prior to the Effective Date of this Agreement.

By checking the box associated with this agreement I affirm that I have read it in its entirety and that I understand and agree with its contents.